

The opt-in jurisdiction of the DIFC Courts

The new Dubai Law No. 16 of 2011 now provides commercial entities with the option to resolve their disputes before the Courts of the Dubai International Financial Centre ("DIFC"). This short briefing examines some of the issues to consider when deciding whether to "opt-in" to the jurisdiction of the DIFC Courts.

Advantages of opting into the jurisdiction of the DIFC Courts

- Language –proceedings are in the English language, and translation of agreements and documents into Arabic, with its associated costs, is avoided.
- Experienced judiciary / proactive case management – the majority of the judiciary are from common law / commonwealth countries with many years experience of complex commercial disputes.
- Availability of immediate (summary) judgment - where either a Claimant has no real prospect of succeeding on the claim or a Defendant has no real prospect of successfully defending the claim or issue. A useful procedure for straightforward debt claims or where a borrower has no real defence.
- Ability to strike out claims and defences – particularly useful for vexatious claims.
- No automatic right of appeal – permission to appeal must be obtained, and will only be granted where the Court considers that the appeal has a real prospect of success or there is some other compelling reason why the appeal should be heard.
- Availability of Part 32 offers (equivalent to Part 36 offers in the English Courts) – a procedure whereby either party can make a formal offer to settle, which if not accepted may have costs consequences for the other party. This is an effective tool to place pressure on a party to settle the claim and therefore reduce costs.
- Costs – a winning party will be able to claim a greater portion of their legal costs (usually in the range of 60%-75%) in the event that they are successful before the DIFC Court, when compared to costs recovery before the Dubai Courts which is extremely limited (usually in the region of USD500-2000 as a maximum).
- Application of governing law – the DIFC Courts will apply the chosen law agreed by the parties in their contracts.
- Enforcement in Dubai – under Dubai Law No. 16 (and the Protocol of Enforcement between the DIFC Courts and the Dubai Courts), the Dubai Courts should "rubber stamp" judgments and arbitration awards (ratified by the DIFC Courts) as appropriate for enforcement in Dubai from the DIFC Courts, providing they are "final and enforceable", without reviewing the merits of the claim. This avoids the lengthy validation process that is required before the UAE Courts to enforce domestic and foreign judgments and arbitration awards.

Other issues to consider

- Proceedings before the DIFC Courts are generally in public, in contrast to arbitration proceedings.
- Costs may in some instances be higher than for proceedings before the Dubai/UAE Courts (but lower than arbitration proceedings), although a greater portion of those costs are recoverable before the DIFC Courts.
- It remains unclear what "final and enforceable" means in terms of enforcing DIFC Court judgments before the Dubai Courts. For example, it is unclear if judgments that contain an element of interest, or judgments that relate to contracts which are akin to gambling contracts (eg derivatives contracts) would be enforced by the UAE Courts, as they may be seen to be contrary to UAE law and therefore not "enforceable".
- Enforcement – there remains a question over enforcement of

DIFC Court judgments outside Dubai (for example in Abu Dhabi), in the wider UAE, the GCC and beyond. This will be a matter for the domestic law of the country (and Emirate) in which the parties try to enforce that judgment. The only certain way to resolve this is for the DIFC Courts and the UAE to enter into further reciprocal enforcement treaties with other Emirates in the UAE, GCC countries and beyond.

- Arbitration therefore remains a viable alternative, especially if you are seeking to enforce against assets held outside the UAE, given that the UAE is a signatory to the New York Convention which, in theory, at least, makes UAE arbitral awards enforceable in any other convention country. The costs of arbitration, however, are usually higher than those before the DIFC Courts (depending on the size and extent of the dispute).
- Where the subject of the dispute is real estate or security held outside the DIFC in the UAE, there is a risk that the DIFC Courts may decide they have no jurisdiction to determine the dispute as real estate related matters should be determined by the jurisdiction where the real estate assets (or security) are located. Whether the DIFC Courts will take this position is

unclear as there has been no case law yet on this point.

Key contacts

Graham Lovett

graham.lovett@cliffordchance.com

Tel: +971 4 362 0625

James Abbott

james.abbott@cliffordchance.com

Tel: +971 4 362 0608

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Building 6, Level 2, The Gate Precinct, Dubai International Financial Centre, P.O. Box 9380, Dubai, United Arab Emirates

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